

FIRST APPEAL NO. 2209/95 to 2212 of 1995

Date of Decision : 16-12-1995

For Approval & Signature

THE HON'BLE MR. JUSTICE A.R DAVE

1. Whether reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder ?
5. Whether it is to be circulated to the Civil...

Mr. Nitin Amin, learned Advocate for Appellants.

Mr. N.N Pandya, learned AGP for the Respondents.

CORAM : A.R DAVE, J.

16-12-1995

C.A.V COMMON JUDGMENT :

The present appeals have been filed by the appellants-claimants whose lands situated at village Dhavat, Ta : Karjan, Dist : Vadodara were acquired for the purpose of construction of canals under Narmada Canal Project. The land Acquisition Officer awarded Rs. 18000/ per Hectare to the claimants under his Award dated 3.4.1989, though a sum of Rs. 1

Lakh was claimed by the claimants per Hectare Being aggrieved by the above-referred Award, Land Ref. Case Nos. 1101/92 to 1104/92 were filed by the appellants claimants in the Court of the 4th Jt. Extra Asst. Judge, Baroda. The said cases were dismissed by a common judgment and decree dated 20.9.1994. Being aggrieved by the said judgment and decree, the present appellants have approached this Court by way of present appeals. As all the references had been consolidated and decided by a common judgment and decree, the appeals arising therefrom are also decided by a common order with the consent of the learned advocates.

The lands in question were acquired for the purpose of construction of Narmada Canal Project. Notification under sec.4 of the Land Acq. Act, 1894 (hereinafter referred to as the L.A.Act) was published on 6.2.1985 and the notification under sec.6 of the L.A.Act was published on 29.1.1986 . The learned 4th Jt. Extra Asstt.Judge, Baroda, ultimately dismissed the Land Reference Cases after considering the evidence led before her and after hearing the concerned advocates.

On behalf of the appellants claimants, one of the claimants Shri Arvindbhai Ishwarbhai was examined at exh.11. Witness Shri Marubhai Patel exh.21 had given details with regard to the price of crops which were cultivated on the lands in question and in the vicinity. Several extracts of Village form No.7/12 were exhibited on behalf of the claimants to show number and nature of crops cultivated on the lands in question.

On the other hand, on behalf of the opponents, a statement giving details of market value of some of the of lands situated in the vicinity was produced at exh.36.

Ultimately upon appreciation of the evidence adduced, the said reference cases were dismissed as the Reference Court came to the conclusion that no evidence was adduced on behalf of the claimants so as to show that value of the lands in question, was more than what was awarded by the Land Acquisition Officer and, therefore, determination of market value of the lands in question at the rate of Rs. 18,000/ per Hectare or Rs. 1.80 per sq.mt. was upheld.

Mr. Amin appearing for the claimants submits that the value of the land arrived at by the Land Acquisition Officer and as confirmed by the Trial Court is much on the lower side. Of course, he fairly concedes that the market value of the land in question at the relevant time was around Rs.60,000/ per Hectare and, therefore,he submits that the claimants would be satisfied if the said amount is awarded to them instead of Rs. 1 lakh per Hectare claimed by them before the Trial Court as well as before this court.

In support of his above-referred submission, he submits that though there was no evidence showing the market value of the land in question on the basis of transactions of sale or purchase of the lands in the vicinity, there was ample evidence to calculate the correct market value of the lands in question by considering the value of crop raised on the land in question. He has drawn my attention to exhibits 12 to 14 which are extracts of village form no.7/12 which give details of the crops cultivated on the lands in question. Upon perusal of the said documents, it appears that the claimants were growing cotton, groundnut, tuver etc. on the lands in question. He submits that two or more crops per year were taken by the claimants on the lands in question and the lands in question are quite fertile.

The trial court has rightly not believed that two or more crops were taken by the claimants on the lands in question and I do not see any reason to disagree with the said finding. It is, therefore, not believed that two or more crops were taken by the claimants.

It is however clear upon perusal of the record pertaining to the cases that atleast one crop was being taken by the claimants. As there is no evidence to determine the market value of the lands in question on the basis of sale instances, in my opinion, the value of the produce should be considered as a method for determining market value of the lands.

It has been deposed by one of the claimants Shri Arvind Ishwarbhai at exh.11 that in the year 1984-85, 10 to 12 quintals of cotton was grown on one vigha of land and about 3 quintals of Til was grown during the said period. In addition to the above referred crop, 7 to 8 quintal of groundnut was grown on one vigha of land. He has deposed that at the time when notification under sec.4 was issued, he used to get Rs. 17000/ p.a. by way of sale proceeds and after deducting about Rs. 6000/ by way of expenses, he used to get Rs. 11,000/ as net income per vigha. Prima facie, it appears that the quantum of crop referred to by the claimant is exaggerated. However, even if I consider only one crop of cotton being cultivated, the claimant can be believed to have produced roughly 10 to 12 quintal cotton and as the price of the cotton at the relevant time was approximately Rs. 700/ per quintal, the claimant could be said to have earned approximately Rs. 7000/ to 10000/ per vigha. Reducing 1/3rd of the sale proceeds as cost of cultivation, the resultant figure would come to Rs. 4000/ which can be treated as net income per vigha and in that event it can safely be said that the claimant was earning approximately Rs. 1.70 per sq.mt. per year. If the said amount is capitalised at the rate of 10 times so as to determine the value of the land in question, the value of the land can be determined at Rs. 17.00 per sq.mt. The above-referred rough

calculation can help us for the purpose of determining the value of the lands in question and if we determine the value of the lands in question on the above-referred basis, the market value of the land can be determined at Rs. 17.00 per sq.mt. Though the above-referred method may not be strictly scientific, the said method has been adopted as one of the methods for determining the value of the land and, therefore, I adopt the said method.

As stated herein above, it is pertinent to note that a sum of Rs. 1 lakh per Hectare has been claimed by the claimants and, therefore, the claimants cannot get more than Rs. 1 lakh per Hectare. Shri Amin fairly concedes that the value of the land in question was around Rs.6/per sq.mt. at the relevant time and has reduced his claim to that extent. I do not see any reason for not determining market value of the lands in question at the rate of Rs.6/ per sq.mt. or Rs. 60,000/ per Hectare.

On the other hand, learned AGP Shri Nitin Pandya vehemently submits that market value of the land determined by the Land Acquisition Officer is just and proper and no further amount should be awarded to the claimants. He submits that on behalf of the opponents, a statement giving details of market value of the lands in the vicinity was given. He submits that according to the said statement, market value of the lands in question cannot be more than Rs. 1.80 per sq.mt. So far as the said statement is concerned, it may be noted that even according to the statement submitted on behalf of the opponents, market value of the land in vicinity was approximately Rs. 5/ per sq.mt. in April 1985. The said statement has been referred to in para-14 of the judgment. Land admeasuring 88 Are or 8800 sq.mt. was sold for Rs.40,000/ in April 1985. Thus, the market value of the land referred to in the said statement was about Rs. 4.50 per sq.mt.even according to the opponents. It is however pertinent to note that the said statement or details given in the said statement cannot be looked into as neither the vendor nor the vendee was examined so as to prove the transection. The vendor or vendee or the attesting witness ought to have been examined. In the circumstances, the said statement cannot be considered as evidence adduced before the trial court. It may, however, be said that the opponents wanted to lead evidence to the above effect but they could not effectively adduce the said evidence before the court.

AGP Shri Pandya further submits that in absence of any specific instance given by the claimants, claimants can not be awarded any amount beyond Rs. 1.80 per sq.mt.

In view of the facts and circumstances of the case, the market value of the lands in question is determined at Rs.6.00 per sq.mt. or Rs. 60,000/ per Hectare.

In the circumstances, the appeals are allowed. It is accordingly directed that the claimants should be given Rs. 6/ per sq.mt.for the lands acquired . The claimants are further entitled to recover solatium at the rate of 30% on the amount of compensation under sec.23(I-A) of the L.A.Act with 12% further compensation from the date of the notification under sec.4 of the Act till the date of Award or till the date of taking pososession of the lands, whichever is earlier and 9% interest on the additional amount of compensation for the first year from the date of taking possession and thereafater interest at the rate of 15% p.a. till the payment of compensation as per the amended sec. 28 of the L.A. Act.

Appeals are allowed accordingly.

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